

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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CLASS REPRESENTATIVES DOLLY SALERNO  
ROBERT SALERNO, and DIANE AMANTIA,  
individually and on behalf of all others similarly situated,

Plaintiffs,

v.

CITY OF NIAGARA FALLS, *et al.*,

Defendants.

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**AFFIDAVIT OF  
KEVIN M. HOGAN**

Civil Action No.  
1:18-cv-00304 (WKS)

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

KEVIN M. HOGAN, being duly sworn, deposes and says:

1. I am a member of the law firm of Phillips Lytle LLP, attorneys for defendants Occidental Chemical Corporation (“Occidental”), Glenn Springs Holdings, Inc. (“Glenn Springs”), and Miller Springs Remediation Management, Inc. I am admitted to practice law in New York State and in this Court.

2. This affidavit is submitted in support of the motion of Defendants City of Niagara Falls; Niagara Falls Water Board; Occidental; Glenn Springs; GHD Services Inc.; Miller Springs Remediation Management, Inc.; Severson Environmental Services, Inc.; NRC NY Environmental Services, Inc.; Roy’s Plumbing, Inc.; and Scott Lawn Yard, Inc. (“Defendants”) to dismiss Plaintiffs’ Complaint (Dkt. 28) as more fully described in the accompanying memorandum of law.

3. The exhibits attached to this affidavit are documents referenced in Plaintiffs’ complaint and/or documents publically available either on the websites of

government agencies, such as the Environmental Protection Agency (“EPA”), or the New York Department of Conservation (“DEC”), or filed with courts within New York State. Therefore, this Court may take judicial notice of these exhibits which are public records and are relevant to this motion.

4. Exhibit 1 is the 1982 Decision Memorandum and Cooperative Agreement between EPA and DEC regarding the Love Canal, which is referenced in Plaintiffs’ Complaint at paragraph 50.

5. Exhibit 2 is the 1985 EPA Record of Decision selecting the Love Canal Remedy.

6. Exhibit 3 is the 1987 EPA Record of Decision modifying the selected Love Canal Remedy.

7. Exhibit 4 is the 1988 EPA Record of Decision modifying the selected Love Canal Remedy.

8. Exhibit 5 is the 1989 Partial Consent Decree between the United States, the State of New York, and Occidental.

9. Exhibit 6 is the 1991 EPA Record of Decision modifying the selected Love Canal Remedy.

10. Exhibit 7 is the 1994 Consent Judgment between the State of New York and Occidental.

11. Exhibit 8 is the 1996 Consent Decree between the United States and Occidental.

12. Exhibit 9 is the 1996 EPA Explanation of Significant Differences modifying the selected Love Canal Remedy.

13. Exhibit 10 is Glenn Springs's 2017 Site Management Periodic Review Report ("PRR") regarding the Love Canal Remedy.

14. Exhibit 11 is a letter from the DEC accepting Glenn Springs's 2017 PRR.

15. Exhibit 12 is the Five-Year Review Report regarding the Love Canal, dated September, 2003.

16. Exhibit 13 is the Five-Year Review Report regarding the Love Canal, dated September, 2008.

17. Exhibit 14 is the Five-Year Review Report regarding the Love Canal, dated January, 2014.

18. Exhibit 15 is the Sanitary Sewer Investigation and Remediation Report dated March 2011, which is referenced in Plaintiffs' Complaint at paragraph 68.

19. Exhibit 16 is the Consent Decree between the State of New York and Honeywell International Inc. filed in the *State of New York v. Honeywell International, Inc.*, No. 89-cv-815, in the Northern District of New York, which is discussed in the accompanying memorandum of law.

20. Exhibit 17 is the amended complaint filed in *Bartlett v. Honeywell International, Inc.*, No. 5:13-cv-365, in the Northern District of New York, which is discussed in the accompanying memorandum of law.

WHEREFORE, for all of the reasons set forth in the accompanying memorandum of law, Defendants respectfully request that the Court:

1. dismiss Plaintiffs' Complaint, with prejudice, and without leave to replead; and

2. grant Defendants such other and further relief as the Court deems proper.

Dated: Buffalo, New York  
August 20, 2018

/s/ Kevin M. Hogan  
KEVIN M. HOGAN

Sworn to and subscribed before  
me this 20th day of August, 2018.

/s/ Laura A. Kryta  
Laura A. Kryta  
Notary Public, State of New York  
No.: 01KR6288575  
Qualified in Erie County  
My Commission Expires 09/09/2021

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